

VZCZCXYZ0000  
PP RUEHWEB

DE RUEHDG #0778/01 0622308  
ZNR UUUUU ZZH  
P 032308Z MAR 06  
FM AMEMBASSY SANTO DOMINGO  
TO RUEHC/SECSTATE WASHDC PRIORITY 3857  
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY  
RUEHC/DEPT OF LABOR WASHDC PRIORITY

UNCLAS SANTO DOMINGO 000778

SIPDIS

SIPDIS

DEPT FOR WHA/CAR, WHA/PPC MIKE PUCCETTI, DRL/IL PAT DEL VECCHIO, DEPT. OF LABOR JANE RICHARDS; DEPT PASS USAID FOR LAC/RSD BARRY MACDONALD

E.O. 12958: N/A

TAGS: ELAB FAID ETRD KJUS DR  
SUBJECT: CORRECTED: PROPOSAL FOR LABOR JUSTICE ACTIVITIES IN THE DOMINICAN REPUBLIC

REF: A. STATE 26123

1B. SANTO DOMINGO 761 (CANCELLED)

11. Summary: This is the corrected 2006 Embassy request for funding of a Dominican Republic Labor Justice capacity building program to support implementation of the Free Trade Agreement between the Dominican Republic and the United States and enforcement of the Dominican Labor Law. This program builds on the Embassy's highly successful justice sector strengthening program; additional funding is required to extend activities to the labor jurisdiction. Inability to implement these activities would put in serious risk the ability of the Dominican government to comply fully with the labor provisions of DR-CAFTA.

12. Background and Situation: While the Dominican Republic benefits from a well crafted Labor Code consistent with ILO core labor principles and international law, successful implementation of DR-CAFTA requires more effective enforcement of the labor law and better service delivery in labor dispute resolution. The proposed approach includes high level policy dialogue, technical assistance for institutional capacity building, training of sector officials, and assistance with policy and procedural reform. These are necessary to assure compliance with DR-CAFTA and to maximize its benefits. End Summary.

13. This cable lays out a three year program of assistance estimated to cost USD 1.5 million per year for a total of USD 4.5 million.

Characteristics of the Labor Justice System in the Dominican Republic

-----

14. A study of case load in labor jurisdictions conducted in 2000 documented that the majority of labor cases are claims of wrongful separation from employment (86 percent), followed by salary issues (8 percent). The average case resolution time was 15.3 months in courts of first instance and 16.4 months in appeals courts, unworkably long considering family economic livelihoods are at stake. Only 4.5 percent of cases were conciliated in the court system. Others were conciliated at the level of the Labor Ministry, but no statistics are available to document the numbers. The study reports significant inequity in access to justice, a grossly inadequate number of labor jurisdiction public defenders, and generally negative impressions of the efficacy of the system. Generally, workers are not aware of their rights or of how to register a claim. Significant levels of corruption and

influence peddling are reported, particularly involving collusion between private lawyers, prosecutors, and judges to lower claims and "buy" cases from workers who cannot afford to wait months for a final settlement. The labor law introduces "vocales" (spokespersons) who are low paid lay representatives (one each for the plaintiff and the defendant) who receive no training or supervision. They are appointed annually by labor and employer representatives in each jurisdiction to assume the role of conciliators but in reality do not play this role.

Expected Results

-----

15. The following results are expected:

- a. Make labor jurisdiction officials familiar with DR-CAFTA obligations and their application of Dominican labor law.
- b. Reduce labor case processing time.
- c. Increase access and quality of service delivery in labor jurisdictions.
- d. Improve protection of worker rights and make possible timely and equitable redress of grievances.
- e. Vastly increase the percentage of labor cases resolved through conciliation rather than full trial procedures.

Specific Activities

-----

16. These cover three years.

Year 1:

- a. Complete a diagnostic study of the labor dispute resolution system (justice sector and Ministry of Labor) including case load, resolution times and mechanisms, analysis of institutional capacity, percent of cases conciliated, percent of salary decrease in final resolution for litigated and conciliated cases, and 'pre-judicial' case load (cases resolved before entering the court system). An analysis of labor court procedures will also identify reforms that can be implemented through administrative decree so to increase efficiency and access. This study will update similar work from 2000, serve as a baseline for later measure of results, and guide reform initiatives.
- b. Train 50 percent of labor justice personnel on the content and application of the Dominican labor law and international labor law standards. (officials currently in labor jurisdiction: 70 judges, 68 labor specific public defenders, 40 prosecutors, 220 vocales and 172 investigators)
- c. Train 200 judicial personal in conciliation authority, procedures, and techniques (emphasizing vocales, investigators, and judges).
- d. Train all labor jurisdiction public defenders (68 currently) in defense procedures, techniques, case investigation and presentation.
- e. Procedural/administrative reform: begin consensus building and drafting of an administrative order to clarify, regularize, and assure the efficacy of the 'vocal' function.

Year 2:

- f. Support recruitment, training, and supervision of career prosecutors, recruited using merit-based, competitive criteria for the labor jurisdiction (to end the practice of appointing prosecutors as political patronage, as is now the case).
- g. Train remaining 50 percent of labor justice personnel on the content and application of the Dominican labor law and international labor law standards.
- h. Support recruitment, training, and supervision of career

labor jurisdiction public defenders, recruited using merit-based, competitive criteria for the labor jurisdiction (to end the practice of appointing public defenders as political patronage, as is now the case).

i. Train an additional 200 judicial personal in conciliation authority, procedures, and techniques (emphasizing vocals, investigators, and judges).

j. Support drafting, consensus building, and passage of an administrative order to be issued by presiding justice of the Supreme Court to clarify, regularize, and assure the efficacy of the 'vocal' function, which currently does not function or creates obstacles for efficient labor case resolution.

Year 3 :

k. Support consensus building, drafting and congressional debate on reform of the Labor Code to include greater emphasis on conciliation, revision of the 'vocal' function, on procedural reforms to improve flexibility, and on rapid and effective case resolution, and to decrease discretionary decision-making.

l. Train new-hire career public (labor) defenders in defense procedures, techniques, and strategies and train new-hire career prosecutors in labor law, criminal law as related to labor issues, international labor rights and practical skills development.

m. Support the implementation of the administrative order (approved in year 2) to clarify, regularize, and assure the efficacy of the 'vocal' function.

Link with US policy objectives and current assistance program

-----

17. The 'White Paper' on trade and labor from April 2005 developed by CAFTA regional labor ministries established as top priorities the modernization of the labor justice system and strengthened capacity to enforce laws, conduct inspections, and resolve disputes . The DR-CAFTA agreement identifies as priorities the increased respect and

recognition of local labor laws and international standards and expanded capacity, enforcement and compliance in order to protect the region's workers.

18. Activity implementation and achievement of results specified would be possible with a USD 4.5 million budget and a three-year time-frame, as these activities directly complement to the on-going USG justice program focused on the criminal jurisdiction. Adding similar activities in the labor jurisdiction would require a minimal additional investment, as relationships are already established with sector institutions and NGOs. Similarly, the USG public diplomacy program is already focused on these issues, although in the criminal context. This proposal allows for leveraging results in the labor jurisdiction by piggy-backing on the current USG justice strategy.

19. The Department of Labor's "Cumple y Gana" project has a good track record for its work with the Dominican Labor Ministry. Stakeholders agree that the training provided to labor inspectors has greatly increased their skills and performance, and institution building activities have been successful. We understand that this activity will continue with FY05 ESF funds allocated to USDOL and will include new education/awareness activities on worker rights and means for redress. For this reason, this project does not focus primarily on the Ministry of Labor. It is recommended that DOL include the creation of an internal inspection unit in the Ministry of Labor to manage whistle blowing and assertions of official corruption.

Cost

110. Estimated cost to achieve results above is \$1.5m per year. Activities will be implemented through direct grants to the National Judicial School to conduct training activities and through grants to Dominican NGOs and small firms to implement other activities.

111. Summary Project Annual Budget:

- a. Training of justice sector officials  
USD 500,000
- b. Legal education campaign and outreach  
USD 300,000
- c. Technical assistance for institutional/procedural reform  
USD 200,000
- d. Legal and policy advocacy  
USD 200,000
- e. Program administration  
USD 300,000

112. This proposal lays out activities and results over a three year time frame. Approximately \$1.5 million per year is required to achieve these high level, sustainable institutional changes, assure protection of worker and employer rights under the CAFTA-DR agreement, and improve efficiency in adjudication and conciliation.

Degree of Local Buy-In

113. This proposal has been developed in conjunction with representatives of the Ministry of Labor, including a former minister, a subject-matter specialist, labor judges, the national judicial training school, the Attorney General's Office, the professional association of attorneys, and legal advocacy NGOs. There is consensus among all actors that the actions proposed here are feasible, that they would target priority weaknesses in the labor justice system and that once in place, they would significantly improve the access, quality, and protections provided by the system.

KUBISKE